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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **OAKLAND**

19 MAHLON D. AND EMILY D.,

20 Plaintiffs,

21 v.

22 CIGNA HEALTH AND LIFE INSURANCE
COMPANY and DOES 1 through 10,

23 Defendants.
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Case No. 4:16-cv-07230-HSG

**STIPULATION OF THE PARTIES TO
MODIFY THE SCHEDULING ORDER;
~~PROPOSED~~ ORDER**

Complaint Filed: December 19, 2016
Trial Date: None Set
Judge: Hon. Haywood S. Gilliam, Jr.

1 Plaintiffs Mahlon D. and Emily D. ("Plaintiff") and defendant Cigna Health and Life
2 Insurance Company ("Defendant")(collectively "the Parties") submit this stipulation and
3 respectfully request that the Court modify the Scheduling Order in this matter based on the
4 following:

5 **A. Current Status**

- 6 1. This matter is governed by the Employee Retirement Income Security Act.
- 7 2. The Court took under submission on or about July 6, 2017 cross-motions by the Parties
8 to establish the Standard of Review under ERISA that will be applied to this matter.
9 The Court has not yet issued a ruling on these cross-motions.
- 10 3. Under the current scheduling order, cross-motions for judgment on the merits of this
11 matter must be filed by September 22, 2017. Responses to the cross-motions must be
12 filed on October 13, 2017 and the hearing on the cross-motions is November 9, 2017.

13 **B. Reasons for the Requested Modification in the Scheduling Order**

14 The Parties jointly request that the Court modify the briefing schedule for the cross-motions
15 for judgment because in order to draft a concise brief, the Parties need to know the standard of
16 review. A brief on the merits in an ERISA matter governed by the abuse of discretion standard is
17 entirely different than a matter governed by the de novo standard of review. The briefs will be
18 significantly longer and more cumbersome if the Parties have to address the application of both
19 standards of review.

20 In addition, the Parties have discovered over the last 10 days that there are issues that must
21 be resolved concerning the content of the Administrative Record in this matter. The Parties are
22 working in good faith to resolve these issues but need more time to work out what must be
23 included in the Administrative Record in this matter.

24 Finally, settlement discussions are ongoing and additional time for these discussions is
25 needed once the standard of review is decided as knowing the standard of review will impact the
26 settlement discussions.

27 **C. Suggested Modifications**

28 The Parties hereby jointly request that, in the order deciding the cross-motions on the

1 standard of review, the Court set a briefing schedule which calls for the filing of the cross-motions
2 for judgement on October 20, 2017, or three weeks after the issuance of the order on the cross-
3 motions on the standard of review, whichever is later. The Parties respectfully request that the
4 Court, based on this date for the filing of cross motions, set a date for the filing of the response and
5 for the hearing date for the motions that are convenient for the Court.

6 DATED: September 13, 2017

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

8 By: /s/ Sean P. Nalty
Sean P. Nalty
9 Shivani Nanda

10 Attorneys for Defendant CIGNA HEALTH AND
11 LIFE INSURANCE COMPANY

12 DATED: September 13, 2017

DL LAW GROUP

14 By: /s/ David M. Lilienstein
David M. Lilienstein
15 Kate Spielman.

16 Attorneys for Plaintiffs MAHLON D. AND
17 EMILY D.

18
19 **~~PROPOSED~~ ORDER**

20 Based on the stipulation of the Parties set forth above, and GOOD CAUSE appearing
21 therefore, the Court hereby modifies the Scheduling Order taking the September 22, 2017 date for
22 the filing of cross-motions for judgment, the October 13, 2017 response date, and the November 9,
23 2017 hearing date off calendar. The Court will set a new briefing schedule in the Order deciding
24 the cross-motions on the standard of review with the motions for judgment on the merits of this
25 matter to be filed by October 20, 2017 or three weeks after the order on the standard of review is
26 issued, whatever is later.

27 **IT IS SO ORDERED**

28 DATED: 9/14/2017


HAYWOOD S. GILLIAM, JR.
United States District Judge